

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIAM R. DAVIS
Claimant

VS.

WESTERN RESOURCES, INC.
Respondent
Self-Insured

)
)
)
)
)
)
)

Docket No. 199,966

ORDER

Claimant requests review of the Preliminary Hearing Order of Administrative Law Judge John D. Clark entered in this proceeding on August 17, 1995.

ISSUES

The Administrative Law Judge denied claimant's request for medical and temporary partial disability benefits. Claimant requested this review and contends the Judge denied his request based upon an adverse finding of timeliness of notice or written claim. Respondent contends it is more probable the denial was based upon failure to prove a present need for medical treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the argument of the parties, the Appeals Board finds:

(1) The jurisdiction of the Appeals Board to review preliminary hearing findings is statutorily created by K.S.A. 44-534a. The statute provides the Appeals Board may review those preliminary findings pertaining to the following: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice was given or claim timely made; and (4) whether certain defenses apply. The Appeals Board also has jurisdiction to review preliminary hearing findings if it is alleged an administrative law judge exceeded their jurisdiction. See K.S.A. 44-551, as amended by S.B. 59 (1995).

(2) In the Preliminary Hearing Order now before us, the Administrative Law Judge held:

"The claimant's request for additional medical treatment is denied.
This matter is ripe for a settlement conference.

IT IS SO ORDERED."

The Appeals Board recognizes the Workers Compensation Act does not specifically require the administrative law judges to provide a statement of the basis for their denial of benefits. However, when benefits are denied and the denial may have been based upon a finding not subject to review, the Appeals Board cannot perform its obligations under the Act without an indication by the judges as to the basis for their decision. In the absence of such indication, the Appeals Board has no alternative but to remand the proceeding to the administrative law judge to add to the order a brief sentence or statement of the basis for denial of benefits.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this proceeding should be, and hereby is, remanded to the Administrative Law Judge with instructions to state the reason for the denial of claimant's request for benefits. The Appeals Board does not retain jurisdiction over this proceeding.

IT IS SO ORDERED.

Dated this ____ day of November, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, Kansas
T. L. Green, Topeka, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director